

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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JOHN DOES, et al., ) C17-0178-JLR  
Plaintiffs, ) SEATTLE, WASHINGTON  
v. ) February 20, 2019  
DONALD TRUMP, et al., ) Telephonic  
Defendants. ) Discovery  
Conference  
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JEWISH FAMILY SERVICES, et )  
al., )  
Plaintiffs, )  
v. )  
DONALD TRUMP, et al., )  
Defendants. )

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES L. ROBERT  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For the Plaintiffs: Justin B. Cox  
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1 THE COURT: Good morning, counsel, this is Judge  
2 Robart. May I have appearances by the two lawyers who are  
3 going to be speaking?

4 MR. COX: Good morning, Your Honor. This is Justin  
5 Cox, I'll be speaking for the plaintiffs in these  
6 consolidated cases.

7 THE COURT: Thank you.

8 MR. DUGAN: Good morning, Your Honor. Joseph Dugan,  
9 with the Department of Justice Civil Division, on behalf of  
10 the defendants.

11 THE COURT: Thank you, counsel. Good morning.

12 Thank you for participating in the letter briefing,  
13 Western District procedure. We find many times we can  
14 resolve these matters more expeditiously. And so we tend to  
15 do this.

16 I want to do this a bit differently, in that I'm going to  
17 give you some tentative conclusions that we've reached, and  
18 then I'm going to ask each side some questions. And my  
19 thought is that you'll have a better idea how to answer the  
20 questions and what are the court's real concerns if I do  
21 that.

22 First, in regards to the depositions, it seems to me that  
23 the government is contending that the deliberative-process  
24 privilege protects the questions that are being asked in the  
25 depositions. That's subject to that four-part test. And we

1 have two depositions in this. In regards to Ms. Gauger, that  
2 appears to us to not be subject to the privilege; and  
3 consequently, we probably would allow those questions.

4 In regards to Ms. Higgins, I don't think that the  
5 plaintiffs have put forth a sufficient showing, at least at  
6 this point. And so we would be inclined to allow or credit  
7 those objections.

8 And then you also raised this question in regards to this  
9 one issue in which the law enforcement privilege is alleged.  
10 And, frankly, I don't think we have enough knowledge about  
11 that to be able to rule. But having read the plaintiffs'  
12 letter, it's not clear to me that they're asking the court to  
13 do anything in regards to it. So, if you are, I need to know  
14 that. And then, secondly, it may be that we just need to  
15 send it out here and let me take a look at it and see how it  
16 relates to the claimed privilege.

17 So, with that as some basis for where I am, I'm going to  
18 start, Mr. Cox, with you. Will you explain to me, with some  
19 detail and precision, how your questions to Ms. Higgins  
20 relate to either mootness or jurisdiction?

21 MR. COX: Yes, Your Honor. So the questions to  
22 Ms. Higgins are -- well, backing up slightly. So with  
23 regards to the agency memo, the defendants and their counsel  
24 have represented repeatedly that the SAO distinction was a  
25 product of this working group's review and report.

1       The NPR article on which Barbara Strack, who reported  
2 directly to Ms. Higgins, demonstrates that those  
3 representations were, at best, misleading. And that, in  
4 fact, the SAO suspension was dictated by the White House on  
5 its concerns relating specifically to Somali refugees.

6       Now, one question we have is whether or not -- essentially  
7 how far those instructions went. We don't know, for example,  
8 if these instructions are why our Somali refugee clients, why  
9 their cases are not moving. We don't know if there are other  
10 such instructions that were effectively laundered through  
11 this agency-memo process.

12       And so we think that the fact that the defendants have --  
13 we think defendants have put this at issue by making these  
14 factual representations to the court about the role of the  
15 working group's review. And so we think they've put it at  
16 issue. And so it seems a little odd to us that they're now  
17 claiming that they can't test with the very factual  
18 representations they made to this court, when here there's  
19 clear evidence that those factual representations were at  
20 least incomplete.

21           THE COURT: It seems to me that you're well off into  
22 "merits land" here, counsel.

23           MR. COX: Well, Your Honor, there's certainly the  
24 case that the nature of the legal violation is going to have  
25 a bearing on the relief that's necessary to remedy it. At

1 some point it's certainly true that the two inquiries are  
2 somewhat related. But the standard of relevance here -- and  
3 to be clear, defendants are not claiming this is not  
4 relevant, they were quite explicit in the deposition that  
5 they were not making a relevance objection. And given that  
6 they've put it at issue, we think it's not privileged.

7 THE COURT: You state in your letter, "Plaintiffs  
8 need to understand why the agency memo suspended refugee  
9 processing, to understand whether defendants fully complied  
10 with the preliminary injunction."

11 Try me one more time here. Explain that statement to me.

12 MR. COX: Sure. So if the SAO suspension, if the  
13 real purpose of the SAO suspension was to target Somali  
14 refugees -- and as, you know, the public reporting  
15 demonstrates that Somalia is on the list of eleven countries  
16 that have to get this extra security check, if the purpose of  
17 the SAO suspension was really to target Somalis, then we --  
18 knowing that is going to inform us, the way that we look at  
19 the way they implemented the injunction and what's been  
20 happening to the Somali refugee clients since then. That's  
21 why we think that it's relevant, Your Honor.

22 THE COURT: All right. Let me give you one more  
23 chance to boost your record here. If your questions  
24 concerning why the agency suspended refugees process in the  
25 first place go to your underlying claims, then it seems to me

1 that that's really the question of the government's  
2 implementation of the preliminary injunction. And that  
3 throws me back into merits. Why am I wrong on that? Other  
4 than I've probably just confused you with what I said.

5 MR. COX: I do confess a little confusion, Your  
6 Honor. But I think -- well, what I'll say --

7 THE COURT: Let me try this: It seems to me that why  
8 the agency suspended the refugee process, that question goes  
9 to your underlying claims and not to the government's  
10 implementation of the preliminary injunction. Why am I wrong  
11 with that?

12 MR. COX: I think that Your Honor is -- I would not  
13 disagree -- I guess what I'll say is this, Your Honor:  
14 Whether or not the case is moot depends on a few factors.  
15 One of them is whether or not the effects of the suspension  
16 are continuing. And the effects can be continuing because  
17 defendants violated the preliminary injunction. And I think  
18 that we'll be briefing that at some point in the future. But  
19 that's not the only reason that the case can -- the effects  
20 of the suspension could be continuing.

21 And it's concerning to us that the government and counsel  
22 represented something to the court and to the world about why  
23 the suspension was taking place, that it doesn't look like is  
24 true. And so this isn't a long line of questioning that we  
25 want to ask. We just simply want to ask Ms. Higgins, like,

1 isn't it true that the White House directed this? What else  
2 did they direct? Because we think that it is relevant to the  
3 question of whether or not the suspension, the SAO suspension  
4 in particular, whether or not the effects of it are  
5 continuing to this day, such that this case is not moot,  
6 regardless of whether or not it relates specifically to the  
7 implementation of the preliminary injunction.

8 THE COURT: All right. Let's move on to the document  
9 for a moment. Are you moving to compel production? You  
10 don't say that in your letter.

11 MR. COX: Yeah, we got sandbagged on this one a  
12 little bit, Your Honor. On Sunday we e-mailed with opposing  
13 counsel, and we all seemed to agree that the issues that were  
14 going to be addressed were the privilege issues that we  
15 addressed in our memo. And the first time that we knew that  
16 defendants wanted to brief this issue is when we saw it in  
17 the letter brief -- in their letter brief.

18 So the document they're talking about is a spreadsheet  
19 that was first produced, I don't know, six months ago, maybe.  
20 And the columns that they have redacted, they have never --  
21 the very first time they claimed that that column was  
22 privileged was in the letter brief to Your Honor. It had  
23 never appeared on any of defendants' privilege logs. And so  
24 we think that is -- and so on February 4th when defendants  
25 produced the documents that this court ordered them to



1 produce, following the grant of the motion to compel, they  
2 reproduced that spreadsheet and listed some redactions, but  
3 not that column.

4 And so we brought it to their attention on February 5th  
5 that that document -- we don't understand why that document  
6 continued to have redactions. On Sunday we exchanged e-mails  
7 with opposing counsel, and we were informed that defendants  
8 were still working on their position as to that document.  
9 And the very first time that they articulated that position,  
10 again, was in the letter briefing.

11 And so we certainly think that the document should be  
12 produced. We'd like it to be produced immediately so that we  
13 can question the witness that we have here today, if need be,  
14 about it. But, that said, Your Honor, I certainly appreciate  
15 what Your Honor said about not having sufficient information  
16 to rule on this. So if the court is not inclined to order it  
17 to be produced immediately because of the failure for six  
18 months to claim privilege, then we would certainly request  
19 the opportunity to brief the issue.

20 THE COURT: All right. Mr. Dugan, I'd like you to  
21 address the document for a moment, then I'll give you a  
22 chance to talk about the deposition question. What's the  
23 government's position on the document?

24 MR. DUGAN: We have a slightly different view of the  
25 chronology from the plaintiff. The reason why we included

1 this very short discussion in our letter brief was because we  
2 were under the impression that plaintiffs were going to bring  
3 this matter to the court's attention in their letter brief.  
4 And the reason we were under that impression is because in  
5 the e-mail exchange that Mr. Cox mentioned, I understood the  
6 plaintiffs to be saying if we did not list the redaction,  
7 they were going to bring the documents to the court's  
8 attention.

9 It is possible that I misread or misunderstood Mr. Cox's  
10 e-mail. But since this call was set up and since the letter  
11 brief was set up, we inferred, on the defense side, that if  
12 we didn't get the redaction off the document in time, this  
13 would end up in plaintiffs' letter. So we just wanted to  
14 make sure we included a discussion, albeit a fairly  
15 abbreviated discussion of the issue in our letter.

16 The government's position is that if the plaintiffs are  
17 open to a further meet-and-confer type discussion about dates  
18 and redactions, we can do that. If the plaintiffs would like  
19 to submit the documents for the court's inspection, I don't  
20 think we would have any problem with that. But the redacted  
21 column is sensitive for the reasons that I briefly discussed  
22 in the letter. But I appreciate that it's difficult for the  
23 court to assess, I guess the fulsomeness of our concerns, if  
24 the court doesn't have the document in front of the court.

25 But from the government's perspective, it doesn't -- we're

1 not asking the court to rule on this. This is essentially a  
2 protective insertion in our brief.

3 THE COURT: All right. Counsel, I'm going to ask you  
4 to do the following: I'm going to deny, if there was a  
5 motion to compel, which seems to be uncertain, and order you  
6 to go back to meet-and-confer. If you are unable to reach an  
7 agreement, then I would ask you to file a written motion, and  
8 as part of that produce the document in camera for the court.

9 Excuse me, I have a cold these days. That's the best  
10 resolution I can come up with out of that question.

11 Mr. Dugan, I'd like to hear you on the depositions now,  
12 please.

13 MR. DUGAN: Yes, Your Honor. Would you like me to  
14 discuss the Higgins or the Gauger deposition first?

15 THE COURT: Well, give me your reason why I'm not  
16 correct in the question of Ms. Gauger -- I assume it's  
17 Ms. Gauger -- then talk about Higgins.

18 MR. DUGAN: Yes, Your Honor. So with respect to  
19 Ms. Gauger, there were one or possibly two questions where we  
20 asserted deliberative-process privilege. One question where  
21 we clearly did, and the second question it was a little  
22 muddled. The question where we clearly asserted  
23 deliberative-process privilege was, "Was there any discussion  
24 of whether PRM needed to add a certain number of interviews  
25 in order to comply with the injunction?"

1 Now, we, I think, would concede that the scheduling of  
2 circuits rides and interviews is highly relevant to  
3 plaintiffs' theory of the case as we understand it, and as  
4 well the court's preliminary injunction order and order of  
5 January 9th denying our motion to stay. So we wouldn't  
6 dispute that testimony about circuit rides, where they  
7 occurred, maybe details about coming for interviews. That  
8 would all be fair game.

9 This specific question seems to us to implicate core  
10 deliberative material, in the sense that, as I understand the  
11 question, plaintiffs are asking about internal conversations,  
12 about whether the injunction required, again, a certain  
13 number of interviews.

14 Not only did that question strike the government as  
15 seeking an improper legal conclusion from a non-lawyer  
16 witness, it likely would have implicated attorney-client  
17 privilege, to the extent that either agency counsel or DOJ  
18 litigation counsel weighed in on that question. And it  
19 certainly implicates the deliberative-process privilege.

20 Now, I'm aware of the *F.T.C.* -- the *Warner* factors  
21 plaintiffs cited in their discovery letter. So I think the  
22 question then becomes, all right, if it's core deliberative  
23 material, have the plaintiffs nevertheless made a showing  
24 that they, I guess, need it, or that it's highly relevant to  
25 their analysis of the mootness issue.

1 Frankly, I just don't see how it is. And this brings me  
2 back into Your Honor's discussion with Mr. Cox. I think the  
3 salient question generally in these depositions is, what does  
4 the government do? Not, what are the different internal  
5 conversations, perhaps with counsel, or perhaps among  
6 policymakers or operators. The question is, what do we do?  
7 Not, what did we contemplate or what did we discuss? Because  
8 ultimately, regardless of what the conversations were, this  
9 court is going to assess the government's compliance in what  
10 I understand to be plaintiffs' future motion practice, or  
11 anticipated motion practice, based on what we did.

12 We could have had a conversation about having circuit  
13 rides all over the world. But it wouldn't make any  
14 difference. What matters is where did they actually go and  
15 what does the court understand about our obligations under  
16 the court's two orders of December and January?

17 The other question for Ms. Gauger, again, it was a little  
18 unclear whether this was really an invocation of privilege,  
19 the question was, "Did you consider adding other countries  
20 besides the ones listed?" And I objected and said, "I would  
21 instruct the witness not to answer. That being said, if the  
22 question is just what the witness considered, she can  
23 answer." And then plaintiffs' counsel said, the question is,  
24 just: Did you personally consider adding other countries?

25 So I think the witness answered that question. But if the

1 plaintiffs were trying to get the witness to answer what PRM  
2 considered, or what other state departments considered, I  
3 would say that question is improper for the same reasons that  
4 I just described. Internal deliberations and considerations  
5 are not what matters for the mootness inquiry; however, they  
6 might be for some hypothetical merits claim. What matters is  
7 what we did.

8 THE COURT: Well, would you agree with me that under  
9 at least the *Warner* case, the burden is on you to show me why  
10 disclosure would hinder frank and independent discussion  
11 regarding the contemplated policies and decisions? And  
12 specifically I'm warned, you know, don't listen to the  
13 generalities, listen to the specifics. And I don't see in  
14 your letter any discussion of that particular question -- you  
15 know, that factor of the *Warner* test.

16 MR. DUGAN: I agree with Your Honor that as I  
17 understand the case law in the Ninth Circuit, the burden is  
18 on the government to perfect its privilege. And I understand  
19 the chilling effect that I think Your Honor is referring to,  
20 and is one aspect of the deliberative-process privilege, and  
21 perhaps the -- one of the key impetus -- I don't know the  
22 plural for impetus -- impetuses for the deliberative-process  
23 privilege. But I think the *Warner* test requires a more  
24 comprehensive balancing.

25 And it seems to me that if the information sought is core

1 deliberative, which I don't think plaintiffs are challenging,  
2 or at least I haven't heard that yet, if it's irrelevant, if  
3 there is other more relevant evidence available -- and here  
4 we would say the actual, the actual circuit rides that  
5 occurred, or the circuit rides that were finally planned,  
6 would be more relevant to determining whether we complied  
7 with the injunction, then I tend to think that those  
8 considerations should outweigh -- or, rather, those  
9 considerations are the most relevant and important  
10 considerations.

11 As far as the chilling piece, I don't have a really  
12 specific explanation for the court. But it seems to me that  
13 if agency decisionmakers are aware that their preliminary  
14 discussions or their not-final discussions about how to  
15 comply with the court order are going to become part of the  
16 public domain, people are going to be much less willing to  
17 speak. Because that's a big deal, right? The government  
18 takes seriously, as I had represented in prior filings, our  
19 obligation to comply with Your Honor's orders. So I would  
20 think that -- whether it's Ms. Gauger or anyone else -- it  
21 would be difficult and chilling for those individuals, for  
22 those career civil servants to know that their preliminary  
23 understanding or assessment of a court order, particularly  
24 for non-lawyers, would become something that would be part of  
25 public discourse. So, I agree with Your Honor that we have

1 the obligation or burden to prove it, or to satisfy Your  
2 Honor that we have perfected the privilege, I do think there  
3 is a risk of chill here, but I think the greater  
4 consideration is the utter irrelevance of this line of  
5 questioning, given the other evidence that we've allowed or  
6 the other questions we've allowed our witness to answer.

7 THE COURT: Well, counsel, here's my problem with  
8 that, which is, you've put in portions of the questions and  
9 answers, and you certainly put in your objections, but I  
10 don't see relevance as an objection in connection with this  
11 particular issue. Are you making a relevance objection?

12 MR. DUGAN: Well, Your Honor, in terms of -- so, Your  
13 Honor is correct that I didn't include relevancy as a stated  
14 objection during the deposition. In all candor, I don't  
15 typically impose or interpose a relevancy objection, because  
16 my understanding is that generally the scope of depositions  
17 is pretty broad. And I understand, although I can't cite a  
18 case for Your Honor, that relevancy is never waived in the  
19 deposition, it's something that can be litigated later.

20 I do think that the point of our letter to Your Honor --  
21 Your Honor noted we spent a good chunk of the letter talking  
22 about the history of the case. The purpose of that  
23 discussion was to illustrate that we think that the  
24 challenged question both concerning the --

25 THE COURT: Counsel, stop. Will you start over about



1 two sentences ago, because you drifted off there. I'm not  
2 sure if you got away from the phone, or what.

3 MR. DUGAN: I apologize, Your Honor. I'll stand  
4 closer to the microphone.

5 THE COURT: Okay. And go slower.

6 MR. DUGAN: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. DUGAN: What I was trying to convey is that the  
9 letter that we submitted, the first couple of paragraphs, in  
10 discussing the history of the case, the point we were trying  
11 to convey, perhaps inartfully, was that all of the challenged  
12 questions, both those from the Higgins deposition and those  
13 from the Gauger deposition, correspond, in our view, to the  
14 plaintiffs' merits theory of the case, or perhaps what we  
15 think their merits theory of the case might be. So they are  
16 patently irrelevant, because they do not go to the question  
17 of, is the case moot? They do not go to the question of, did  
18 the government comply with the court's preliminary injunction  
19 order?

20 So there is a relevancy, kind of an overarching relevancy  
21 concern that I think is animating the government's position  
22 in all of these discussions.

23 THE COURT: Mr. Dugan, it's my morning to beat up on  
24 you. I mean, I'm referring to the *Warner* test, *F.T.C. v.*  
25 *Warner*, Ninth Circuit, 1984. What is the first factor listed

1 in the four-factor test?

2 MR. DUGAN: Relevance, Your Honor.

3 THE COURT: So it seems to me that you have a burden  
4 in regards to this, if you want me to find in your favor, in  
5 favor of the non-disclosure, to make that argument. And to  
6 sort of say: Well, it's not my usual practice to do so. I  
7 mean, lots of things are not my usual practice. But that  
8 doesn't get you out of the four-factor test. The Ninth  
9 Circuit loves multiple-factor tests, as you'll probably find  
10 out.

11 MR. DUGAN: Yes, Your Honor.

12 I appreciate Your Honor's point. And I guess I would  
13 reiterate that the whole purpose of our letter -- and  
14 perhaps, again, it could have been worded better -- was to  
15 convey to the court that we don't understand the challenged  
16 questions and answers, in both the Higgins and the Gauger  
17 depositions, to have anything to do with the mootness  
18 question before the court, to have anything to do with the  
19 limited jurisdictional discovery that the court authorized.

20 In other words, the questions are completely irrelevant.  
21 They're not just irrelevant in sort of the normal civil  
22 litigation sense where lawyers might disagree about how  
23 useful a fact is. They're irrelevant because they don't  
24 answer the question that is going to be presented to the  
25 court in the forthcoming motion practice -- I assume there

1 will be motion practice from both sides -- which is going to  
2 be, do the plaintiffs' claims continue to exist? And then  
3 kind of this related claim or concern about whether the  
4 government complied with the injunction.

5 I just don't see how what the agency decisionmakers might  
6 have contemplated that, you know, bears on that question.  
7 What is relevant -- the only thing that is relevant, I think,  
8 is what the agency did. And the same point holds back for  
9 the line of questioning about the history of the agency memo.  
10 I do not understand what that has to do with the mootness  
11 question before the court. It could be perhaps germane.

12 And if we find ourselves in six months or a year back at  
13 the table, if the court ultimately decides the case is going  
14 to be in some trajectory, we would have to have a further  
15 conversation then about which privilege should attach and  
16 why. But here, today, for the limited purpose for which the  
17 court has authorized discovery, I do not understand how any  
18 of these questions are remotely relevant to the issue that  
19 the court has signaled as the basis for jurisdictional  
20 discovery.

21 THE COURT: Well, how about her declaration that you  
22 submitted saying that these are attempts to comply with the  
23 court's preliminary injunction? It seems to me, sir,  
24 basically you've got your sword in one hand and your shield  
25 in the other, and you're using one or the other to argue in

1 favor of your litigation position. And I'm specifically  
2 forbidden to justify that.

3 MR. DUGAN: So I appreciate Your Honor's point. I  
4 guess what I would say in response that is, if Your Honor  
5 looks at the Gauger declaration, paragraph 6 is the relevant  
6 paragraph, what it says is, and I'm quoting, "In furtherance  
7 of its compliance with the court's injunction, the State  
8 Department currently plans to add locations to its request  
9 for its third quarter circuit rides where large populations  
10 of SAO nationals are ready for interviews," and then it goes  
11 on to list some countries.

12 In other words, that is a decision, right? At least it  
13 was at the time this document was signed. That was a  
14 representation from the agency saying, this is what we were  
15 going to do. It is fair game for the plaintiffs to ask the  
16 witness questions about that. I think the plaintiffs could  
17 ask a question about why those countries were chosen. And if  
18 the question went further about, were other countries  
19 considered, who talked about it, who said what to who.

20 But I don't think the fact that we told the court, this is  
21 what we are going to do to comply with the injunction,  
22 somehow exposes the full, underlying deliberative process.  
23 And if that were the case, then I would think any time an  
24 agency revealed a decision, whether in the declaration or in  
25 a memorandum, or in some other kind of document promulgated

1 to the public, that would somehow eviscerate the underlying  
2 deliberations. But we know that's not the case, right? No  
3 case I'm aware of stands for the proposition that the  
4 privilege is eviscerated once a decision is reached. On the  
5 contrary, the whole point of the deliberative-process  
6 privilege is that it protects the predecisional deliberative  
7 communications, but not the final decision, or any actions  
8 taken pursuant to the final decision.

9 And, again, I would just suggest that the relevant and  
10 salient question here should be: What did the government do,  
11 and where did the circuit rides occur? And I think that's  
12 what the declaration is getting at. And I imagine there are  
13 other questions they could ask along those lines that would  
14 actually be relevant to their case at this posture.

15 THE COURT: All right. Well, let me summarize the  
16 court's rulings, then.

17 I've ordered you to go back and meet-and-confer in regards  
18 to the document. And if need be, if you're unable to reach  
19 an accommodation, to then file a motion under your protective  
20 order or a motion to compel. And I need to see the document,  
21 I need to see the heading, because I don't feel like I have  
22 enough information to rule on that as is.

23 In regards to Higgins, I'm going to stand by my earlier  
24 statements, particularly as -- I won't say "modified," but  
25 apparently you've reached some greater clarity on that.

1 She's obviously required to testify concerning her personal  
2 knowledge or her personal opinion in regards to matters. I  
3 think the deliberative privilege can potentially -- and I  
4 stress "potentially" -- exist, if the question is what were  
5 the factors that the decision was ultimately made on?  
6 Something like that.

7 In regards to Gauger, I'm going to basically send you back  
8 to a meet-and-confer and to talk about the question of  
9 relevance. You know, I chide the government to some extent,  
10 Mr. Dugan, because it seems to me that since the first *Warner*  
11 factor is relevance, I'm hearing more about relevance today  
12 than really is in the letters. And given my rulings in  
13 regards to Higgins, I would think that you could probably  
14 work out acceptable questions that would resolve this matter  
15 and not require the court to further intervene in it.

16 So, any questions that I can answer for you before I tell  
17 you to go forth and do good?

18 Mr. Cox?

19 MR. COX: Nothing further from plaintiffs, Your  
20 Honor.

21 THE COURT: All right, Mr. Dugan?

22 MR. DUGAN: No, Your Honor. Thank you for your time.  
23 Nothing further.

24 THE COURT: All right. Then, counsel, we'll be in  
25 recess. And I urge you all to be cooperative and recognize

1 that it's easy to get very involved in these discovery  
2 questions. And when you come back to see me, you'll get a  
3 decision that's using a hatchet as opposed to a scalpel,  
4 which is never in the parties' interests. Take care and have  
5 a good day. We're in recess.

6 (Recess.)

7  
8 C E R T I F I C A T E

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10  
11 I certify that the foregoing is a correct transcript from  
12 the record of proceedings in the above-entitled matter.

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16 /s/ Debbie Zurn

17 DEBBIE ZURN  
18 COURT REPORTER  
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